

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20665

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Implementation of Section 9 )  
of the Communications Act ) MD Docket No. 96-186  
 )  
Assessment and Collection )  
of Regulatory Fees for Fiscal 1997 )

COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC.,  
SOUTHWESTERN BELL WIRELESS, INC., AND  
PACIFIC BELL MOBILE SERVICES

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**COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC.,  
SOUTHWESTERN BELL WIRELESS, INC., AND  
PACIFIC BELL MOBILE SERVICES**

Southwestern Bell Mobile Systems, Inc., Southwestern Bell Wireless, Inc. and Pacific Bell Mobile Services (Collectively referred to as "SBMS") hereby comment on the Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceeding<sup>1</sup> related to the payment of regulatory fees by Commercial Mobile Radio Service ("CMRS") licensees.

**I. Regulatory Payments And The Number Of Units On Which The Payment Was Calculated Should Not Be Published In The Federal Register.**

In the FNPRM, the Commission proposes to publish annually in the Federal Register, lists of those commercial communication firms and businesses that have paid a regulatory fee for the preceding fiscal year, including the amount of the fee paid and the volume or units upon which the payments were based. The Commission justifies

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<sup>1</sup> In the Matter of Implementation of Section 9 of the Communications Act - Assessment and Collection of Regulatory Fees for Fiscal Year 1997, MD Docket No. 96-186, Further Notice of Proposed Rulemaking, released July 18, 1997.

this proposal based on the grounds that it will “enable fee payers to verify that their payments have been properly recorded and to bring errors to our attention, thereby reducing the burden on our fee payment verification process.”<sup>2</sup>

SBMS adamantly opposes both this publication and the implicit possibility that the fees will be reported on a market specific basis. These numbers could show, on a market-by-market basis, the number of customers a given CMRS provider has in that market. This is perhaps the most closely guarded information in the industry and is not disclosed in any forum, except as a global overall number of subscribers without market specific reference. Indeed, the Commission has demonstrated that competitive sensitivity by permitting licensees to file fees with a list of markets showing one subscriber for each market and a global total number. The same reporting structure should be applied herein. It is the ultimate number that is of interest to the Commission, as this is the amount upon which fees are paid. Reporting this information on a market specific basis, and then having that information made public by the Commission will result in a grave, untenable compromise of the competitive integrity of the marketplace.

Because the relative number of subscribers by market is not released in any forum, the Commission’s stated goal of publishing the information for verification is not accomplished any more so than it could be with a global number verification with the individual payor. Since competitors do not know how many customers their opponents have in a market, they could offer no independent verification or even a

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<sup>2</sup> Id. At para. 6.

starting point for a correct calculation. The existing rules for protecting information are neither strong enough nor far reaching enough to guarantee non-disclosure of these highly sensitive numbers. The Commission's goal of verification by this method is elusive and is more than offset by the anti-competitive risks inherent in the proposed policy.

Accordingly, SBMS opposes this proposal. By disclosing confidential and proprietary financial and customer information to the public, the Commission would undermine its goal of creating competition in the marketplace. Competitors could use such information to manipulate the marketplace and measure the success of their results. Furthermore, the Commission must also consider the antitrust effects of disclosing commercially sensitive data.

If the Commission's goal is to indeed verify proper payment and to reduce the burden on the fee payment verification process, the Commission can simply communicate receipt of the payment and request verification from individual carriers on a case by case basis. Releasing the information to the public has absolutely no relevance to the verification process. As stated, only the payor can verify the accuracy of the payment. SBMS opposes the Commission's proposal and respectfully requests that the Commission decline to publish annually the fee payments of CMRS licensees in the Federal Register, nor should it require licensees to report on a market specific basis. A global number upon which the fees are based is what the Commission needs and can be reported without incurring anti-competitive risk.

**II. Documentation Concerning The Fee Payments Should Be Granted Confidential Treatment Under Section 0.457 of the Commission's Rules.**

The Commission proposes “to require licensees of CMRS to maintain and make available to the Commission within 30 days, upon request by the Managing Director, pursuant to delegated authority, documentation concerning the basis for their [CMRS] fee payments.”<sup>3</sup> The Commission also states that acceptable documentation “might include records such as reports to other government agencies, billing records, certified financial statements, or other records that demonstrate the accuracy of the fee payment.”<sup>4</sup> While SBMS has no objection to maintaining and making such documentation available to the Commission as proposed, SBMS strongly encourages the Commission to amend Section 0.457 of its rules, and afford CMRS providers with the same protection given to cable television systems and broadcast stations for annual fee computations. (See 47 C.F. R. §0.457 (d) (1) (i) and (iv)).

The Commission's acceptable documentation proposal requires, that upon request, CMRS competitors release highly confidential customer information to the Commission. Customers have entrusted their providers with sensitive information that must be shielded from the public. To do otherwise, would not serve the public interest and could have an anti-competitive result. Likewise, the Commission's rules regarding records not routinely available for public inspection should be applied consistently.

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<sup>3</sup> Id. At para. 2.

<sup>4</sup> Id. At para. 3.

### **III. The Commission Should Clarify The Basis of the Regulatory Fee Payment.**

The FNPRM states that the documentation concerning the basis of the regulatory fee payment pertain to the “number of pagers, cellular telephones or PCS units.”<sup>5</sup> This language suggests that the fee will be calculated on the number of wireless handsets. If so, it is contrary to language in the Report and Order released June 26, 1997 which states “each license in this group [CMRS] will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), assigned to its customers, including resellers of its services.”<sup>6</sup> Furthermore, the Commission released a Public Notice August 1, 1997, setting the regulatory fee payment at \$0.24 per telephone number/unit for CMRS cellular radio licensees (Part 22).<sup>7</sup>

SBMS respectfully urges the Commission to clarify the basis for the regulatory fee payment. In addition, SBMS requests that the Commission consider that wireless customers may have only one number assigned to multiple handsets.

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<sup>5</sup> Id. At para. 2.

<sup>6</sup> In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997, MD Docket No. 96-186, Report and Order, Released June 26, 1997.

<sup>7</sup> FY 1997 Commercial Wireless Regulatory Fees, FCC Public Notice, Released August 1, 1997.

IV. Conclusion.

SBMS supports the Commission's efforts in this proceeding to ensure that regulatory fee payments are based on accurate information. However, SBMS requests that the Commission neither publish nor require market specific reporting of proprietary information and consider the anti-competitive effects of doing so. Furthermore, verification of documentation should be consistent with the provisions set forth in Section 0.457 of the Commission's rules. Finally, the Commission should clarify the basis of the regulatory fee calculation.

Respectfully submitted,



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